

### **Remarks**

Claims 1-21 were pending in the above-identified application when last examined. Claims 1-21 are presented for reconsideration and allowance.

### **Claim Rejection under 35 U.S.C. § 103**

Examiner rejected claims 1-21 under 35 U.S.C. 103(a) as being unpatentable over Nagata et al. (US 2003/0076766 A1). Applicants respectfully traverse the rejection.

Regarding claims 1 and 15, the Examiner states that Nagata et al. in Figures 6A-6E, discloses, a beam splitter apparatus comprising: a first beam splitter mount (21) and a second beam splitter mount (22), the first beam splitter mount (21) being coupled to the second beam splitter (22) (Figures 6C and 6D) the beam splitter apparatus being arranged so that, in use, a force applied to the second beam splitter mount (22) causes the first beam splitter mount (21) (section 0128) but does not specifically disclose a deformable connection between the first and second beam splitter mounts.

Thus, by the Examiner's own admission, neither Nagata nor any of the other references of record provide any teaching, whatsoever, of applicants' claimed use of a deformable connection between first and second beam splitter mounts. Applicants' claimed use of a deformable connection between first and second beam splitter mounts is not a matter within the knowledge of a person of ordinary skill in the art and the Examiner has

submitted no evidence to the contrary. Accordingly, there is absolutely nothing in the file history of this prosecution to support the Examiner's statement. There must be something in the teachings of cited references to suggest to an individual skilled in the art that a claimed invention would be obvious. *W. L. Gore and Associates v. Garlock, Inc.*, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). "There must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant's disclosure." *In re Dow Chemical Co.*, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988).

The examiner has provided no evidence that it would have been obvious to one of ordinary skill in the art at the time of the invention to use a deformable connection between first and second beam splitter mounts. The examiner must provide **evidence** and personal opinion is not evidence:

... the deficiencies in the cited references cannot be remedied by the Board's general conclusions about what is "basic knowledge" or "common sense" to one of ordinary skill in the art.... This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support.... With respect to core factual findings in a determination of patentability ... the Board cannot simply reach conclusions based on its own understanding or experience - or in its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings. *In re Zurko*, 59 USPQ 2d 1693 (Fed. Cir. 2001)

For the reasons above, applicants respectfully assert that the rejection of claims 1 and 15 is improper and should be reversed.

Dependent claims 3, 4, 9, 10, 16, and 17 further define patentably distinct claims 1 and 15. Therefore, dependent claims 3, 4, 9, 10, 16, and 17 are also believed to be allowable. For at least this reason, Applicant requests reconsideration and withdrawal of the rejection of claims 3, 4, 9, 10, 16, and 17 under 35 U.S.C. § 103(a).

Regarding claims 5 and 11, the Examiner states that Nagata et al. in Figures 6A-6E, discloses a beam splitter apparatus, but does not specifically disclose wherein the beam splitter apparatus comprises a material having a coefficient of thermal expansion of 8ppm/K or less.

Thus, by the Examiner's own admission, neither Nagata nor any of the other references of record provide any teaching, whatsoever, of applicants' claimed use of a beam splitter apparatus comprising a material having a coefficient of thermal expansion of 8ppm/K or less. Applicants' claimed use of a beam splitter apparatus comprising a material having a coefficient of thermal expansion of 8ppm/K or less is not a matter within the knowledge of a person of ordinary skill in the art and the Examiner has submitted no evidence to the contrary. Accordingly, there is absolutely nothing in the file history of this prosecution to support the Examiner's statement. There must be something in the teachings of cited references to suggest to an individual skilled in the art that a claimed invention would be obvious. *W. L. Gore and Associates v. Garlock, Inc.*, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). "There must be a reason or

suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant's disclosure.” *In re Dow Chemical Co.*, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988).

The examiner has provided no evidence that it would have been obvious to one of ordinary skill in the art at the time of the invention to use a beam splitter apparatus comprising a material having a coefficient of thermal expansion of 8ppm/K or less. The examiner must provide **evidence** and personal opinion is not evidence.

For the reasons above, applicants respectfully assert that the rejection of claims 5 and 11 is improper and should be reversed.

Dependent claims 6, 7, 8, 12, 13, and 14 further define patentably distinct claim 1. Therefore, dependent claims 6, 7, 8, 12, 13, and 14 are also believed to be allowable. For at least this reason, Applicants request reconsideration and withdrawal of the rejection of claims 6, 7, 8, 12, 13, and 14 under 35 U.S.C. § 103(a).

Dependent claims 18-21 further define patentably distinct claim 15. Therefore, dependent claims 18-21 are also believed to be allowable. For at least this reason, Applicants request reconsideration and withdrawal of the rejection of claims 18-21 under 35 U.S.C. § 103(a).

### **Conclusion**

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby requested.

Respectfully submitted,

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/John Pessetto/

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